

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 29, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP569-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2010CF182

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CARLENE M. LANDA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Carlene Landa appeals a judgment convicting her of failing to act to prevent sexual assault of her daughter and causing mental harm to a child. She also appeals an order denying her motion to remove the sex offender registration requirement from the judgment of conviction. She contends

there is no evidence she participated in the sexual assaults of her daughter for sexual gratification or to humiliate the child. Rather, she claims she participated because she was afraid of her husband. We affirm the judgment and order.

¶2 The complaint charged Landa with child enticement, first-degree sexual assault of a child and failing to prevent the sexual assaults. Pursuant to a plea agreement, Landa pled no contest to amended charges of failure to protect the child from sexual assault and causing mental harm to the child. The court imposed consecutive sentences totaling four years and six months' initial confinement and four years' extended supervision. The judgment also required Landa to register as a sex offender.

¶3 Landa filed a postconviction motion to remove the sex offender registration requirement, contending her crimes were not sexually motivated. The circuit court denied the motion, finding the crimes were sexually motivated based on the victim's statements as recited in the complaint.

¶4 The two charges correlate with sexual assaults that occurred on December 24, 2009 and February 21, 2010. According to the complaint, the victim said that on Christmas eve and Christmas day she was assaulted by both her mother and her stepfather. Regarding the February incident, she described how her parents had an argument and, as part of the make-up for the argument, they made her engage in a "threesome." They dressed her in nylon stockings and a miniskirt and began touching her all over including specifically her breast area. She said her mother then began touching her "vital area," which the interviewing officer interpreted to mean her vaginal area. She then described how her mother used a purple vibrator and inserted it in her "vital area." Her mother took the vibrator and moved it in and out and then her stepfather had intercourse with her.

¶5 Sex offender registration is not compulsory for the crimes to which Landa entered no contest pleas. However, the court may order a defendant to register as a sex offender if the court determines the underlying conduct was sexually motivated and it would be in the interest of public protection to have the person registered. *See* WIS. STAT. § 973.048(1m) (2011-12).¹ Sexual motivation means that “one of the purposes of the act is for the actor’s sexual arousal or gratification or for the sexual humiliation and degradation of the victim.” *See* WIS. STAT. § 980.01(5).

¶6 Landa does not challenge the circuit court’s conclusion that requiring her to register as a sex offender serves the interest of public protection. She contends her crimes were not sexually motivated. However, the circuit court was not required to believe Landa’s self-serving claim that her husband made her do it. The circuit court is the arbiter of the witnesses’ credibility. *State v. Kienitz*, 227 Wis. 2d 423, 435, 597 N.W.2d 712 (1999). The acts described by the victim and the absence of any hesitation or protestation by Landa support the inference that she was a willing participant in the assaults and that her crimes were sexually motivated.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

